

**YOUR  
RIGHT TO  
REMAIN**

**UNISON campaigning for  
EU and EEA nationals and  
their families**



JOINT COUNCIL FOR THE WELFARE OF IMMIGRANTS

**This publication has been produced by UNISON and the Joint Council for the Welfare of Immigrants**

## **About JCWI**

The Joint Council for the Welfare of Immigrants (JCWI) is an independent national charity founded in 1967 that provides direct legal assistance to immigrants and campaigns for a human rights based approach to the formulation of asylum, immigration and nationality law. JCWI provides a telephone helpline for UNISON members that provides free initial advice on all aspects of immigration law. See page 17 for more information.

### **Joint Council for the Welfare of Immigrants**

jcwi.org.uk

Email: [policy@jcwi.org.uk](mailto:policy@jcwi.org.uk)

Telephone: 020 7251 8708

Charity No: 1117513



Now, more than ever, our union must show its support for members from across the EU. They have given so much to our communities and our services – now we must stand with them and defend their right to remain.

UNISON believes that migrants who come to this country should be allowed to remain on the basis of the rules in place when they arrive – and not find, as has happened far too frequently and with the Brexit decision, that the rules change once they are here.

Wherever you are from and however long you've lived and worked here – UNISON will stand up for you."



Dave Prentis  
General Secretary, UNISON

## Introduction

This booklet provides practical help to UNISON members whose right to live and work in the UK is dependent on their citizenship of another EU country.

The first thing to say is that nothing has changed legally following the referendum. However, the future is now uncertain. One thing you can be certain of however, is that UNISON will campaign for the right of EU citizens to remain. This booklet is part of that campaign and provides practical information and support in three areas.

1. It tells you how you can become part of the UNISON campaign for the right to remain. If we all work together our voice becomes more powerful and we have a much better chance of ending the current uncertainty. The best way to do this is to join our 'UNISON EU Members Network' Facebook page. There we will be posting and tweeting actions colleagues can take as well as sharing information. One of the things we will be doing as part of the campaign is lobbying MPs, MEPs, other politicians and employers. It would be great to have as many members as possible involved in that.
2. It outlines the help and guidance we offer to members about what they can do to safeguard their position here. We are doing this with our immigration advice partners JCWI who are helping with answers to important questions like:
  - a. Should I apply for permanent leave to remain?
  - b. What about applying for British Citizenship?

Here we can only provide some initial advice on these complex subjects. However, UNISON members are entitled to a free telephone consultation with a JCWI lawyer. If you want to arrange a consultation (available on Tuesdays only) call us free on 0800 0 857 857. We will then arrange for JCWI to call you back on the next available Tuesday.

3. It is also clear that the Brexit vote in the EU referendum has given the green light to a wave of xenophobia, bigotry and racism. Denigrating or discriminating against someone on the grounds of their nationality is race discrimination. UNISON has a policy of zero tolerance to racism and the final section of this booklet contains advice from UNISON on what you can do if you either experience or witness race discrimination.

## Your rights as an European Economic Area (EEA) national in the UK

UNISON wanted to give you an easy to understand overview of the residence rights of European Economic Area (EEA)<sup>1</sup> nationals in the UK. Since the UK referendum vote to leave the European Union (EU), many EEA nationals and their families are worried about their future rights to remain here. This booklet outlines the current position and also suggests some steps that EEA nationals should take to help secure their right to reside here.

EU free movement law and UK immigration law are vastly complex. There are many exceptions and areas of uncertainty. The exact rights of European Economic Area (EEA) nationals and their family members to live, work, access services and reside with their family members in the UK can often depend on the very precise circumstances of an individual case. This booklet is not intended to, and cannot substitute for, advice from a qualified immigration adviser. Nor can it replace many of the more detailed sources of information that we provide links to on page 17.

While we have provided some information about the cost and the procedure of applications for residence cards, permanent residence and naturalisation, this should be seen as a starting point. You should seek further advice and information - especially before incurring any application costs or risking any prejudice to your position. In some cases, a rejected application may result in the Home Office taking the view that you are in the UK without a right to reside. You will lose your application fee if your application is rejected and you need to reapply. It is therefore important to make sure that you get the application right the first time.

Please see pages 17 and 18 for further information and options for obtaining advice.

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*1. References to EEA nationals in this booklet include citizens of Switzerland, but not of Croatia, unless otherwise stated. See the Glossary for more information.*

## Your key questions answered

### Who is this booklet for?

The rights detailed in this booklet apply to nationals of EU countries, of countries in the EEA, and of Switzerland.

1. The EU countries are **Austria, Belgium, Bulgaria, Croatia<sup>2</sup>, Republic of Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden and the UK<sup>3</sup>.**
2. Everything in this booklet about the rights of EU citizens and their family members also applies to those citizens of countries in the EEA, but not in the EU. These countries are **Iceland, Liechtenstein, and Norway.**
3. It also applies to **Swiss nationals** as Switzerland is in the single market and its citizens have the same rights to work and live in the UK as EU nationals.

### What if I am a Croatian national?

4. There are currently different immigration rules regulating work and residence rights in place for Croatian nationals living and working in the UK under a transitional agreement relating to Croatia's accession to the EU. Croatian nationals need to apply for a registration certificate in order to work in the UK. If you are a Croatian national living or working in the UK you will need to seek advice from JCWI or one of the organisations listed on page 17. Please contact your UNISON rep for details of the JCWI helpline for UNISON members.

### When will we know what the position of EEA migrants and their family members will be once the UK leaves the EU?

5. The UK government has so far refused to give clear assurances safeguarding the rights of EEA nationals currently present in the UK. As a result, the future situation is uncertain.
6. There are three broad possibilities:
  - a. **The UK retains free movement rules and nothing significant changes.** There may be some restrictions on access to benefits, or restrictions on the numbers of workers from certain countries, but these would be highly unlikely to apply to those already resident in the UK.
  - b. **The UK does not retain free movement, but EEA nationals already resident in the UK are allowed to stay.** They may have to apply for a visa and abide by work restrictions, and access to benefits or other rights may be restricted. The right of EEA nationals and their family members who have acquired *permanent residence* will be secure, and anyone who moved to the UK before the referendum date is also likely to be provided with a route to retain their rights of residence. Those who moved to the UK after the referendum date may face stricter controls, but again are likely to be provided with some options. When the UK leaves the EU, future migration will operate under a new system and it is unclear at this point what this will look like.
  - c. **The UK does not reach a satisfactory reciprocal deal on rights of residence.** In this case, anyone who is not a British citizen would be at risk of losing their right to reside. It is very unlikely that anyone with permanent residence will be affected. However, it is possible that the Home Office will dispute permanent residence status, particularly of those without a permanent residence card. The requirement of a five year continuous period while exercising treaty rights may be difficult to

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2. Croatian nationals need to apply for a special registration certificate in order to work in the UK.

3. UK nationals residing in the UK are not normally considered to be exercising free movement rights under EU law. That means that in some circumstances they actually enjoy lesser rights than citizens of other EEA countries residing in the UK.



evidence for those who are not in continuous unbroken employment. Again those with long established residence in the UK are least likely to be affected, and particularly those who have been working in the UK long term. Nevertheless, it is impossible to say with any certainty what such a system would look like.

7. At the moment, the only way to completely guarantee your continued right to live and work in the UK is to be a British citizen. However, it is also unlikely that those who have established permanent residence in the UK before the date of the EU referendum result (24 June 2016) would lose their rights and be required to leave. Also bear in mind, as we explain further at pages 9 and 10, that there may also be disadvantages to becoming a British citizen.

## Can I continue to live and work in the UK?

8. Currently, yes. The UK has not yet officially left the European Union. This will happen after negotiations between the UK and the remaining 27 EU member states, which will begin when Article 50 (the formal mechanism for leaving the EU) is triggered. Current estimates on the government's position is that this will occur early next year. Once Article 50 is triggered the UK will leave the EU within two years. It is possible that the process for leaving the EU could take longer, but this is unlikely.
9. EEA migrants will be able to exercise their EU treaty rights on the same terms as before the referendum until a new agreement comes into force. This includes the right to live, work, study, travel in and out of the UK, and exercise rights as the family member of an EEA national exercising treaty rights in the UK.
10. The rights of EEA migrants in the UK after a UK exit from the EU will depend on the outcomes of negotiations between the UK and the other 27 EU states. We do not currently know what this will look like.

## Will I lose my job as a result of the referendum result?

11. No. EEA citizens currently retain the same rights to live and work in the UK that they had before the referendum result. This will continue at least until the point that the UK officially leaves the EU. Therefore, your job should not currently be affected.
12. What rights EEA citizens will have to work in the UK once the country officially leaves the EU is currently unclear. This will depend on the outcome of the negotiations between the UK and the remaining 27 EU member states. These negotiations will begin once the UK government triggers Article 50, and likely continue for up to two years, though it is possible an extension could be agreed for a longer period of time.
13. If you have been told by your employer that you no longer have the right to live and work in the UK, or you have been dismissed or your contract terminated as a result of the referendum result, this could amount to discrimination and you may also be able to lodge a claim for unlawful dismissal. You should contact your UNISON representative for advice and assistance.
14. For further information please see the section entitled Harassment and Victimisation in the Workplace on page 20.

## What will happen to my family members who are living with me in the UK?

15. Currently, the rights of your family members remain unchanged. If you are a European Economic Area (EEA) citizen exercising treaty rights along with your non-EEA family members, they will retain the same rights until such a point that the UK officially leaves the EU following negotiations. As above, this will take up to two years from when Article 50 is triggered.
16. The position of non-EEA family members of EEA nationals living in the UK, as with EEA nationals themselves, will be decided during these negotiations with the remaining 27 EU

members states. It is not known what the outcome of these negotiations will be.

17. You can find out more, see paragraph 30.

## Does it matter when I entered the UK?

18. Currently the UK remains within the EU on the same terms as existed before the referendum result on 24 June. Nothing has changed in terms of free movement rights, or the other rights of EU citizens who have entered or wish to enter the UK. EU citizens are still free to live and work in the UK, and to enter and leave it, providing they do so within the terms of the EU Treaties. Their family members are likewise entitled to enter and to live here in accordance with their EU Treaty rights.
19. There is a possibility that the UK will remain within the EU, or that the UK government will accept free movement under a different deal. In this case nothing will change in the future.
20. Nevertheless, it looks likely that the government will not accept current free movement principles. Thus the date on which you entered the UK, or the date at which you took up employment in the UK, may become relevant once a new agreement is reached. Whatever the form of the agreement, the UK could assign different levels of rights to EEA citizens and their family members depending on a variety of factors, including when they entered. It is unclear what date or dates will be chosen to differentiate. Possible dates include:
  - a. 24 June 2016, the date of the referendum result;
  - b. The future date on which Article 50 is triggered;
  - c. The future date on which a solid agreement regarding the UK's exit from the EU is agreed; or
  - d. Another agreed date.
21. If you entered the UK **more than five years ago**, and have been exercising treaty rights during that period, you are entitled to apply for recognition of your status as a Permanent Resident. Your family members can do the same. This may assist in securing your long-term future in the UK, as it is unlikely that anyone with Permanent Residence will lose their rights to live in the UK. It is particularly important for non-EEA family members to apply for official recognition of their rights to live and work in the UK, as they are more likely to be affected by rule changes. Please see page 15 for more information.
22. If you have been in the UK for **six years**, and you have obtained proof of Permanent Residence, you can apply for British Citizenship, as can any family members in the same position. Your proof needs to show that you have had Permanent Residence Status for the past 12 months before your citizenship application. You can find out more about obtaining proof of Permanent Residence status on page 15.

## Rights of EEA nationals and family members to reside in the UK

### Who has rights under freedom of movement?

23. This booklet is intended as a guide for EEA nationals already living in the UK. We do include some information about the position of family members of EEA nationals also residing in the UK, as in many instances they will have the same rights to acquiring permanent residence and citizenship as their EEA national family member. Nevertheless, this is not intended as a resource for those wishing to bring non-EEA family members into the UK.
24. Please note that if you are both a British citizen and a national of an EEA country the rules are different. You can find out more at page 9.

## EEA nationals

25. This includes:

- a. European Union (EU) citizens and their family members.
- b. Nationals of Iceland, Liechtenstein, and Norway (EEA countries not in the EU).
- c. Swiss nationals (not in the EEA or EU, but treated the same for the purposes of free movement).

## Direct family members of EEA nationals

26. This category includes:

- a. Spouses and civil partners;
- b. Direct descendants (children, grandchildren etc.) under the age of 21 of the EEA national or their spouse or civil partner;
- c. Direct descendants over the age of 21 who are dependent upon the EEA national or their spouse or civil partner;
- d. Direct ascendants (parents, grandparents etc.) of the EEA national or their spouse or civil partner who are dependent upon them.

27. In this context, 'dependence' does not have to be financial support, but it must be 'material'. This means providing necessities such as clothing, food, and housing.

28. Direct family members of EEA nationals have an automatic right to reside in the UK for as long as they remain a family member, and the EEA national in question is either:

- a. In their first three months of residence in the UK;
- b. 'A qualified person'. This means a person exercising Treaty Rights.
- c. Has established permanent residence.

29. EEA nationals themselves may also benefit from rights derived from a family member. For example, if you are an EEA national, but are not working or otherwise exercising Treaty Rights, you would be entitled to reside in the UK if your spouse is also an EEA national and is exercising Treaty Rights, in their first three months of residence in the UK, or has established permanent residence.

## Those who used to be family members of EEA nationals

30. The rights described below, fall under the category of 'retained rights'. In our experience it can be very difficult to show that you have actually retained rights of residence. You must not assume that because your situation fits within one of the categories described below that the Home Office will accept that you have retained rights. It is likely that you will have to fight for recognition, and it is difficult to succeed in such an application.

31. If the EEA national in question either dies or leaves the country, family members may be able to retain their rights of residence in the UK. The rules surrounding when residence rights may be retained are complex, and if you are in this situation you should seek legal advice.

32. If you are a spouse or a civil partner of an EEA national and you get divorced or dissolve the civil partnership, you may be able to retain your residence rights if you are self-sufficient (with sickness insurance), working, or self-employed, and one of the following applies:

- The relationship (ie marriage or civil partnership) lasted a minimum of three years, with one of those years in the UK;
- If you have custody of or a right of access to the EEA national's children;
- If you have been subject to particularly difficult circumstances, such as being the victim of domestic violence.
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33. If you do retain a right of residence, and you continue to fulfil the conditions of residence by working, being self-sufficient with comprehensive health insurance, or being self-employed, you will acquire permanent residence after a total of five years' residence. This includes the period during which you were living in the UK as a family member of an EEA national.
34. In some circumstances parents and primary carers of EEA nationals who would not otherwise qualify as family members may have rights of residence in the UK.

## **Extended family members of EEA nationals**

35. This includes:
- Relatives of the EEA national or their spouse or civil partner who require their personal care on serious health grounds;
  - The partner of an EEA national who can prove that they are in a 'durable relationship', which is normally one that has continued to exist for two years or more.
36. Extended family members of EEA nationals can also acquire rights of residence in the UK if they are dependent on the EEA national living here. The family member must demonstrate that they were dependent on the EEA national or a member of the EEA national's household. This dependent relationship must have existed in a country other than the UK prior to their arrival here.
37. "Relatives" is a broad term that includes relatives by marriage and from generations above and below. It can include anything from siblings, to great-aunts and second cousins. However, the relationship and dependence needs to be proven.

## **Adoption**

38. Provided it is carried out by a recognised adoption order, UK law treats adopted family members in exactly the same way as biological family members.

## **EEA family members of dual British and EEA nationals**

39. If you are both a British citizen and a citizen of another EEA country and you are residing in the UK, your position is very different with regard to your family members. You are not treated like an EEA national for these purposes, and your family members do not have a right of residence on the basis of their relationship to you.
40. If your family members were already residing in the UK on 16 July 2012 on the basis of their relationship with you (ie as a family member of an EEA national who is exercising Treaty Rights) then they continue to hold a right of residence. The same applies to anyone who applied for an EEA family permit before 16 July 2012.

## **Effect of the EEA national becoming a British citizen on family members**

41. As dual EEA/British nationals are not considered EEA nationals for immigration purposes, there may be some risk in becoming a British citizen if you have family members who are relying, or may rely in the future, on your status as an EEA national in order to reside in the UK.
42. If your family members resident in the UK are applying for citizenship with you, are exercising treaty rights as EEA nationals themselves, or have acquired permanent residence, then they will have an independent right to be here.
43. If not, the position is unclear. We would argue that a good interpretation of EU law requires family members already resident in the UK on the basis of their relationship with an EEA national to retain their EU free movement rights when the EEA national becomes a British citizen. However, it is very possible that the Home Office would not agree with this, and

would treat them the same way as family members of British citizens. The rules for British citizens who want to live with non-EEA family members are in many cases much harsher than for EEA nationals who are exercising Treaty Rights in the UK.

44. For example, as a British citizen you are required to show a minimum income of £18,600 a year in order to have a non-EEA spouse or civil partner come to live with you in the UK. It is also very difficult for British citizens to have non-EEA 'adult dependent relatives' (such as parents or grandparents) to come to live with them in the UK. A British citizen has to show not only that their 'adult dependent relative' needs a high level of personal care owing to age, illness or disability, but also that they are unable to pay for them to obtain that care in the country where they are currently living.
45. Thus, becoming a British citizen could cause serious problems if you had intended to have non-EEA family members who are living abroad join you in the UK or if your family are in the UK but have not acquired any independent right to reside here and are still relying on their relationship to you as an EEA national. However, you must balance this against the possibility that a UK departure from the EU may mean that your family members will not have EEA rights in the future anyway.
46. We would strongly recommend anyone in this position to seek legal advice before taking steps to naturalise as British.

## Children of EEA nationals born in the UK and acquiring British citizenship

47. Children born in the UK with an EEA national parent will automatically be British citizens at birth if:
  - a. They were born before 2 October 2000 and the relevant parent was exercising Treaty Rights at the time of birth;
  - b. They were born between 2 October 2000 and 30 April 2006 and their relevant parent had indefinite leave to remain (ILR) in the UK at the time of their birth;
  - c. They were born after 30 April 2006 and the relevant parent had acquired permanent residence status, or had indefinite leave to remain in the UK.
48. You do not need to have a permanent residence card for this to apply, but it is possible that the Home Office may dispute your child's British citizenship if they later consider that you were not in fact entitled to permanent residence at the time they were born. Even if your child has been since issued with a passport, they may argue it was issued in error. It is extremely important that you retain all documents that prove you had achieved permanent residence before the birth of your child.
49. If the child did not become a British citizen at birth, you still may be entitled to register them as one if their EEA national parent has since become settled in the UK. This means that they have been granted indefinite leave since the birth, or they have acquired permanent residence.
50. If none of the above applies there are other circumstances in which children born in the UK may be entitled to register as British citizens.
51. This is a complex area. It has been known for the Home Office to dispute British passports issued to children of EEA nationals and claim that they are not entitled to them. Please seek legal advice if you have any concerns over your child's status.

## Surinder Singh – rights of non-EEA family members of British citizens returning to the UK after living in another EEA country

52. One route that is open to British citizens and dual British/EEA nationals who wish to reside with a non-EEA family member in the UK is called the *Surinder Singh* route.
53. This applies to the following relations of a British citizen:
  - a. Spouse or civil partner;

- b. Child or child of the British citizen or their spouse or civil partner under the age of 21;
  - c. Child or child of the British citizen or their spouse or civil partner dependent on them;
  - d. Parent or grandparent of the British citizen or their spouse or civil partner and dependent on them.
- 54. Under EU free movement law, British citizens can move to any EEA country to work, study or be self-employed or self-sufficient. British citizens exercising these rights also have the same rights to reside with their family members.
- 55. If the British citizen wishes to return to the UK, they may be entitled to bring their non-EEA family members with them, if they can show that their family members have acquired a right to residence in the EEA country. There is no set time period for how long a British citizen and their non-EEA family members must reside outside the UK before they can return together, but they must be able to show that they have genuinely based their 'centre of life' in the EEA country before returning to the UK.
- 56. British citizens looking to return to the UK with their non-EEA family members should seek legal advice.

## What do I need to do to keep my right to reside in the UK?

The first three months

- 57. EEA nationals and their family members may spend **up to three months** in another EU member state without any conditions apart from having a passport or identity card. For these three months you have no rights to social assistance benefits and must not become an unreasonable burden on the social assistance system. If you become homeless and destitute because you cannot support yourself during this period, you may be subject to removal proceedings.

## Exercising Treaty rights after the first three months

- 58. After these first three months, if you want to continue to reside in the UK you must be a qualified person. This means that you must be exercising a Treaty right or be the family member of an EEA national exercising a Treaty right.
- 59. Those exercising Treaty Rights are:
  - a. Workers;
  - b. Jobseekers;
  - c. The self-employed;
  - d. Those who are self-sufficient;
  - e. Students.

## Workers

- 60. Workers are required to be in 'genuine and effective work', which must not be 'marginal and ancillary'. There is no agreed definition of what this means. An indication of the UK government's thinking on this can be found in the 'minimum earnings threshold' for benefits claims by EEA nationals which as of 6 April 2016 is £155 a week. If you claim for benefits as an EEA national and your earnings over the previous three months are below that level then you will be subjected to an additional test to see if you are in 'genuine and effective' work. This can include consideration of the hours you work, the regularity of the work, and how much you earn.
- 61. Your status as a worker lasts for as long as your contract of employment, whether or not you are on leave such as maternity leave. This includes unpaid maternity leave. You will also retain worker status if you are temporarily unable to work owing to an accident or illness.

62. If you are recorded as being in involuntary unemployment after at least a year's employment and have registered as a jobseeker you will retain worker status. However, after six months of unemployment you will have to provide evidence that you are seeking employment in the UK and have a genuine chance of being engaged in future employment.
63. You can also retain worker status if you cease employment and then begin vocational training. If the end of your employment was voluntary then the vocational training must be related to your last employment.

### **Jobseekers**

64. You have a right to reside in the UK if you are an EEA national and you are looking for work in the UK and have a 'genuine chance' of being engaged in employment. You need to be registered with a Jobcentre Plus and to be signing on. You can claim Jobseeker's Allowance if you satisfy the habitual residence test. This can give you access to other benefits, such as Housing Benefit, Council Tax Benefit, Child Benefit and Child Tax Credit. However, as a jobseeker you cannot get housing or homelessness assistance from a local authority.

### **Self-employed**

65. You have a right to reside if you are doing 'genuine and effective' work as a self-employed person. This includes the process of establishing yourself as a self-employed person and includes periods of maternity leave. If you are temporarily unable to work owing to an accident or illness you also retain your status as a self-employed person.

### **Self-sufficient**

66. In order to be considered to be exercising Treaty Rights as someone who is 'self-sufficient', you must have sufficient resources to avoid becoming a burden on the UK social benefits system and to have comprehensive sickness insurance.
67. There is some dispute over the exact amount in income or savings that you need to have in order to be considered self-sufficient. EU law prohibits a fixed amount being prescribed and states that individual circumstances should be considered.
68. Current UK government policy only regards an EEA national as self-sufficient if they can show that they are earning enough not to be eligible to claim means-tested benefits. If you have free long-term accommodation this can be taken into account.

### **Students**

69. This category covers EEA nationals who are enrolled in an accredited university or college. Students must have comprehensive sickness insurance and to be able to provide assurances that they and their family members have sufficient resources to avoid becoming a "burden on the UK social benefits system".

## **What can I do to help secure my future in the UK?**

### **Overview**

70. Although the future is unclear with regards to what rights EEA nationals will have to live, work and study in the UK after the UK officially leaves the European Union, there are a number of ways you can make your status likely to be more secure.
71. This booklet cannot provide a comprehensive guide to making the applications below. It is intended to make you aware of the different kinds of status that EU nationals and their family members can have in the UK, and inform you of the different ways you can obtain proof of your rights in the UK.
72. We have also attempted to give you a rough idea of the cost and complexity of the various applications and the kinds of evidence you will need to support an application.

73. We encourage all EEA citizens currently living, working and studying in the UK to retain relevant proof of the fact that you have been exercising Treaty Rights. This includes wage slips, contracts of employment, tax returns, student enrolment documents, exam results, bank statements, and any other credible documentary evidence that you have been a student, a worker, self-employed, self-sufficient or looking for work over the period of your residence in the UK following the first three months.
74. As a family member of an EEA national, you should retain all of the above evidence from the EEA national concerned, together with the relevant proof of your relationship.
75. Before making any application you should look at the application forms and accompanying guidance. Ideally, you should consider seeking legal advice from a registered immigration adviser. This booklet should therefore be considered as a starting point, rather than a comprehensive guide to how to make an application.

### **Difficulties with applications**

76. JCWI has received reports that Home Office caseworkers are taking a stricter line on current applications from EEA migrants and their family members. In addition, there are significant delays in processing these applications. We have heard of many instances of applications being rejected on minor technicalities or because evidence submitted in support of an application is considered insufficient (for example that copies of documents have been provided where originals were required).
77. If your application is refused, the Home Office may take the line that you are not exercising Treaty Rights and therefore have no right to reside in the UK. As long as you are exercising Treaty Rights, you are entitled to continue to live in the UK, but it can create significant difficulties if the Home Office takes an opposing view.
78. We understand that seeking professional legal advice for these sorts of applications may not be financially possible for all applicants. However, we do encourage all applicants to make the most of the resources available online and to seek legal advice where possible.
79. You can contact JCWI for legal advice on making any of the applications outlined below. UNISON members can arrange a free initial call with a JCWI solicitor through the union. For details of the UNISON scheme and JCWI's legal advice services, see paragraph 2 on page 4. Links to further resources and other organisations that may be able to assist can be found on page 17.

### **Registration certificate or residence card**

80. Certificates and cards give exactly the same evidence of rights. The difference is that EEA nationals get a certificate, and non-EEA nationals get a biometric card. The same applies with Permanent Residence cards below, where EEA nationals will receive a certificate of permanent residence instead. You may find on the government website and other websites that the words 'card' and 'certificate' are used interchangeably. You should not be concerned by this.
81. EU citizens and their family members who are exercising Treaty Rights in the UK can apply for a registration certificate, or registration card, as evidence of their rights. EEA nationals should apply for a registration certificate, whereas non-EEA nationals apply for a card. The same applies to evidence of Permanent Residence, where EEA nationals should apply for a certificate, whereas non-EEA nationals should apply for a card.
82. On the government website and other websites, the words card and certificate are often used interchangeably. However, read carefully the application form that you are using and make sure that it applies to your situation.
83. If you are an extended family member of an EEA national you need a registration card. If you are an EEA national who is a qualified person (working, studying, self-employed, looking for work, or self-sufficient) you do not have to have a registration certificate. Nor do you need one if you are a family member of a qualified person or have a retained right of residence. To see which of these categories you fall into see the section at page 8.
84. However a registration certificate makes it easier to claim benefits and services and to prove that you have a right to work in the UK. With the new landlord immigration checks,



and other measures designed to create a 'hostile environment' for illegal migrants, non-EU family members may find they need a registration card to remain in private rented accommodation and to avoid other difficulties.

85. With the prospect of changes to the rights of EEA nationals and their family members following any renegotiation of Britain's membership of the EU, a registration certificate may also assist EEA nationals and their family members to prove that they have been in the UK in accordance with their Treaty Rights.
86. The certificate or card is issued for five years at a time.

## Procedure

### Forms

87. You do not have to use the forms provided by the Home Office in order to apply for a residence card or residence certificate. In theory the Home Office should accept any application made by way of a letter requesting that the document (registration certificate) be issued and providing the relevant information, including biometric information where necessary.
88. Even though the forms are long and complicated, it may be advisable to use them where possible. Although the Home Office can't force you to use them, there is a risk that caseworkers are more likely to delay or reject applications not made on the forms.
89. There are three forms provided for applications for residence cards or certificates:
  1. **Qualified persons** (ie EEA nationals exercising treaty rights) use form EEA(QP), which can be found at: <https://www.gov.uk/government/publications/apply-for-a-registration-certificate-as-a-qualified-person-form-eea-qp> .
  2. **Direct family members** should use form EEA (FM): <https://www.gov.uk/government/publications/apply-for-a-registration-certificate-or-residence-card-for-a-family-member-form-eea-fm> .
  3. **Extended family members** should use form EEA (EFM): <https://www.gov.uk/government/publications/apply-for-a-registration-certificate-or-residence-card-for-an-extended-family-member-form-eea-efm> .
90. Detailed guidance notes for each form can be found at the link above.

### Premium Service Centres

91. Additionally if you are a qualified person you can apply in person at a Visa Premium Service. You do not have to pay the £500 fee that is usually applicable to those using the Visa Premium Service. Only the EEA national exercising Treaty Rights can do this. You cannot use the service if you are applying as a family member. This means that even if you are an EEA national applying as a family member of another EEA national, perhaps because you yourself are not exercising Treaty Rights, you cannot use the Visa Premium Service.
92. You can find out more about using a premium service centre and their locations here: <https://www.gov.uk/ukvi-premium-service-centres/overview>

### Evidence

93. The evidential requirements for all EEA applications are extremely high. The Home Office is particularly likely to reject or ask for more information from any applications by extended family members of EEA nationals.
94. As a family member of an EEA national you will need to provide proof that the EEA national in question has *Permanent Residence* or is exercising Treaty Rights as a qualified person.
95. You may need to give additional information or documents depending on your individual circumstances. You must read the form and the guidance notes carefully.

96. If you need to provide biometric information you can obtain it at certain Post Office branches. This costs £19.20 and includes having a photograph taken, having your fingerprints scanned and providing your signature. This should take about five minutes.

### Cost of Registration Certificate or Residence Card

97. There is an application fee of £65 per person.

### Permanent Residence Card or Certificate

98. As you might expect, if you have Permanent Residence, you have the right to live permanently in the UK. This right no longer depends on you being a worker or a family member or otherwise exercising Treaty Rights. It is an independent right to continue to live in the UK without having to fulfil any of the other conditions applied in the first five years. It is possible to lose this right if you are absent from the country for over two years or in other circumstances, such as if you are convicted of a crime.
99. Permanent residence is an automatic right after five years of continuous legal residence in the UK while exercising Treaty Rights. You do not need to make any application to get Permanent Residence. Nevertheless, we would strongly advise you obtain a Permanent Residence card in order to show official recognition of your rights.
100. In some circumstances you can get Permanent Residence after less than five years, for example following the death, retirement, or permanent incapacity of an EEA family member with whom you were living. Or if the EEA family member is working or self-employed now in another EEA state but is still resident in the UK and returns weekly. Please seek advice if you think you are in this situation.
101. You must have a Permanent Residence card in order to apply to naturalise as a British citizen.

### Continuity of residence during the five year period

102. In order to acquire Permanent Residence you must have resided in the UK lawfully for a continuous period of five years. Temporary absences from the UK are permitted:
- If they add up to less than six months in any one year;
  - If they are a single absence of up to 12 months consecutively for 'important reasons', such as serious illness, study, employment posting abroad, or pregnancy and childbirth; or
  - Are for compulsory military service.
103. The kinds of absences above will normally not count towards your five years in the UK, but will not break the continuity of your residence for the purposes of Permanent Residence.

### Forms

104. While you do not technically need to use the official form provided in order to make this application, there may be a risk in not using it.
105. The form is EEA (PR): <https://www.gov.uk/government/publications/apply-for-a-document-certifying-permanent-residence-or-permanent-residence-card-form-eea-pr>
106. Permanent Residence applications take a very long time to process, and the rejection rates are quite high. It is common for the Home Office to ask for extra evidence and documents during the process. **This has been made a very complex and difficult process to navigate.** We would recommend seeking legal advice before submitting an application for permanent residence. UNISON members can arrange a call with a JCWI solicitor through the union. For details, see page 17.

## Documents and evidence

107. In order to apply for Permanent Residence, you need to provide the same evidence as you would for a Registration Certificate, in addition to further proof that you have been resident in the UK for a continuous period of five years and that you were exercising Treaty Rights during that time. This proof will include official documents that cannot be easily forged. These will differ depending on what you have to show. For example, if you have been exercising Treaty Rights through employment the evidence is likely to take the form of letters from your employers, copies of your contracts, P60s, wage slips, and bank statements.
108. The guidance notes for this application ask for vast amounts of evidence. If you can provide it all then this will assist your application. However, if you are unable to provide every piece of evidence, which may be the case particularly if you are self-employed, remember that they are guidance notes and not a strict set of rules about what you absolutely must submit. Nonetheless, it is often safest to submit as much evidence as possible, in line with the guidance. Often the Home Office will ask for even more information than is set out in the forms and the Guidance Note, and will require you to produce further documents and proof.
109. Difficulties may arise if:
- you have any gaps in your period of residence while exercising Treaty Rights, you have changed the basis of your stay (eg going from being a student to a worker), or
  - your right to stay is difficult to prove. Eg
    - Self-employed people may struggle to put together all of the proof the Home Office requires.
    - Family members, particularly extended family members or those with retained rights after a divorce or death may need additional evidence, or may find it more difficult to provide all the proof necessary than the EEA national in question
110. Applying for permanent residence is not an easy process. Before applying, you should read:
- the detailed information available on the Home Office website
  - the application form,
  - the Guidance notes
111. Where possible, we would advise applicants to seek legal advice before making this application as the evidentiary requirements are very complex and the delay and potential consequences of an adverse decision can be very serious.

## Cost of proof of Permanent Residence

112. This costs £65 per applicant.

## Citizenship

### Should I apply for British Citizenship?

113. The decision on whether or not to become a British citizen is a serious one that requires careful thought and consideration. It is also a very personal decision, influenced by your emotions, feelings of belonging and identity. In addition, there are some practical considerations that you may wish to take into account.
114. The main benefit from naturalising as a British citizen is that you will have the same rights as any other British citizen. Given the current uncertainty around Brexit, this is the best way to be absolutely certain that you will continue to be able to work and reside in the UK.
115. However, there are some disadvantages you should be aware of. One is that you will lose many of the free movement rights for family members that you have as an EEA national residing in the UK. See page 7 for more details.

116. You should also check what the rules for holding a dual-nationality are in your home country. Most EU and EEA countries allow this, but some countries, such as Norway, do not permit their nationals to be citizens of more than one country. This means that you may have to sacrifice your current citizenship rights in order to become British. The UK itself allows nationals to be citizens of more than one country.

### Applying for naturalisation

117. Applications to naturalise as a British citizen are expensive and complicated. We recommend that you contact JCWI or another immigration advice organisation before applying. If an application is refused the fee will not be refunded.
118. You will be able to apply for naturalisation if:
- you have been living in the UK for five years, and
  - you have been a *permanent resident* for at least 12 months.
119. This means that most EEA nationals must be in the UK for six years before becoming eligible to naturalise as a British citizen.
120. Remember that acquisition of permanent residence is automatic after five years of lawfully living in the UK and exercising Treaty rights. Thus, while you need a permanent residence card before you apply for naturalisation, you do not necessarily need to wait 12 months after getting the card if you acquired permanent residence before that date.

### Cost of naturalisation

121. The fee to naturalise as a British citizen is £1,236 for an adult. Only £80 of this amount is refundable if your application is withdrawn or refused.
122. The fee for a child is £939, but an extra £80 is payable if the child turns 18 during the application process. This is to pay for the citizenship ceremony.

JCWI provides a free telephone helpline for all UNISON members. The helpline provides free of charge initial advice on all aspects of immigration law. The helpline runs from 10am to 3pm every Tuesday. Members should contact UNISONDirect on 0800 0 857 857 to arrange a phone consultation.

## Other organisations and further information

### The AIRE Centre)

The AIRE Centre is a specialist charity that aims to promote awareness of EU law rights. They usually provide specialist legal advice to advisers but can provide direct legal advice to individuals if the advice concerns EU law on the free movement of persons or is about making an application to the European Court of Human Rights. Please note that the AIRE Centre only provides written legal advice which takes two to four weeks for it to produce.  
Telephone: 020 7831 4276, Monday to Friday, 10am to 6pm

### Citizens Advice Bureau

Citizens Advice Bureaus can help resolve immigration issues with free advice. There is a national helpline which may incur a charge depending on your phone contract.  
For England: 03444 111 444  
For Wales: 03444 77 20 20

Or visit your local Citizens Advice Bureau. This can be found by using their 'Search for Citizens Advice local to you' tool on their website <https://www.citizensadvice.org.uk/about-us/how-we-provide-advice/advice/>

## Local Law Centres

Law Centres are independent, non-profit organisations offering legal advice, casework and representation to individuals and groups. This may include immigration and asylum law. Due to funding cuts, some law centres now charge for advice.

Use the 'Find your local Law Centre' tool at <http://www.lawcentres.org.uk/i-am-looking-for-advice>. If your local Law Centre cannot help you, they will try to refer you to another nearby organisation that can.

## Office of the Immigration Services Commissioner

The OISC maintains a register of regulated immigration advisors (both fee charging and non-fee charging) who are approved by them to give immigration advice. The list is held on their website: <https://www.gov.uk/find-an-immigration-adviser> or telephone their helpline: 0345 000 0046

## Migrants Resource Centre

This organisation offers a range of immigration advice services at a reduced price or free in certain circumstances. For more information or to find out what service you need:

Telephone: 020 7402 6750, Monday to Friday, 10am to 5pm

Or use their drop-in service, Thursday, 10am to 12pm

## Praxis

This organisation provides a free immigration advice line.

Telephone: 020 7729 7895

Tuesday, 2pm to 4:30pm

Thursday, 2pm to 4:30pm

## The Rights of Women

The Rights of Women is a women's voluntary organisation committed to informing and educating women about their legal rights. They offer a free immigration and asylum law helpline.

Telephone: 020 7490 7689

Monday, 12pm to 3pm

Thursday, 10am to 1pm

Please note this service is only available for women or professionals supporting migrant women.

## Scotland

The OISC website and helpline can be consulted for non- solicitor agencies.

<https://www.gov.uk/find-an-immigration-adviser>

or telephone their helpline: 0345 000 0046

For solicitors' firms, the Law Society of Scotland provides names of firms who give immigration/nationality advice. Details can be obtained from its website:

<http://www.lawscot.org.uk/> under the 'Find a solicitor' section.

Or telephone: 0131 226 7411

## Northern Ireland

The OISC website and helpline can be consulted for non- solicitor agencies.

<https://www.gov.uk/find-an-immigration-adviser>

or telephone their helpline: 0345 000 0046

For solicitors' firms the Law Society of Northern Ireland provides names of firms who give immigration/nationality advice. Details can be obtained from its website:

<http://www.lawsoc-ni.org/> under the 'Solicitor Directory' section.



## Glossary

### Article 50

This refers to the process by which the UK is most likely to exit the EU. Once Article 50 is triggered the UK will automatically leave the EU two years from that date whether or not any agreement has been reached. It could leave earlier if an agreement is reached rapidly and an earlier withdrawal date is set. It is theoretically possible that the date can also be postponed, but this is unlikely to happen.

### Dual British/EEA national

Someone who is both a British citizen and a citizen of an EEA country. They are treated in UK immigration law only as British citizens, and may lose some rights that they would have as an EEA national. However, they have an individual permanent right to reside in the UK, without any of the conditions that attach to EEA nationals.

### European Economic Area (EEA) nationals

Citizens of EEA countries\*\*. The EEA countries are: *Austria, Belgium, Bulgaria, Croatia,\* Republic of Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden and the UK.*

*\* Different rules apply to Croatian nationals. See page 4.*

*\*\*The rules described in this booklet also apply to nationals of Switzerland and to the residence of EEA nationals in Switzerland.*

### Free Movement

The free movement of people is one of the fundamental principles of the EU. It applies to EU citizens, and nationals of EEA countries and Switzerland. It means that, with certain restrictions, citizens of these countries and their family members have the right to move freely between them, and to reside, work, and study anywhere within the EEA.

### ‘Leave to enter’ or ‘Leave to remain’ in the UK

A person who has permission from the Home Office to be in the UK. Permission may be ‘time-limited’ or ‘indefinite’.

### Non-EEA nationals

The nationals of countries outside the European Economic Area.

### Permanent Residence

After a continuous five year period of lawful residence in the UK EEA nationals, and their family members automatically acquire a permanent right to reside in the UK. After this they do not have to fulfil the requirements outlined below of being a qualified person in order to retain their rights or their family’s rights to reside. This can be lost in certain circumstances.

### Qualified person

This is an EEA national residing in the UK while exercising Treaty Rights through, working, studying, being self-employed, looking for work, or being self-sufficient.

### Treaty Rights

In this booklet this refers specifically to the rights of EEA nationals to work, study, look for work, be self-employed, or reside in a self-sufficient manner in any EEA country. The fact that an EEA national is exercising these Treaty Rights can give family members of that person a right to reside and work in the same country.

## **RACIAL HARASSMENT AND VICTIMISATION IN THE WORKPLACE**

### **Guidance from UNISON**

Following the European Union referendum, many European Economic Area (EEA) nationals in the UK have been worried about reports of an increase in race hate incidents, in particular, towards migrant workers and ethnic minorities. UNISON recognises that if you are a working EU national in the UK, you may feel unclear about your future.

The Equality Act 2010 has not changed as a result of the UK Referendum. Thus the definition of 'race discrimination' remains the same. The Equality Act 2010 forbids 'race' discrimination, which it defines as meaning colour, nationality and national or ethnic origins. As a result, for example, whether you are Polish as opposed to non-Polish or British, French or Algerian, born in Italy or Kenya or Ireland or England your rights will remain the same.

Below is some helpful information about your rights, and where to go for support and help if you experience racism at work or elsewhere.

### **Basic rights**

All employees have the basic right to:

1. Not be threatened, harassed or bullied;
2. Not be discriminated against;
3. Complain about bad treatment without being victimised; and
4. Work in safe and healthy conditions.

EEA citizens retain the same rights to work, live, study and travel in and out of the UK, and receive benefits in the United Kingdom that they had before the referendum result. Until the UK ceases to be a member of the European Union or until a new agreement comes into force these rights will remain. Therefore your job should not currently be affected.

### **Signs of racial harassment and discrimination**

Examples of harassment and victimisation related to race:

- refusing to work with someone or deliberately isolating them because of their race, colour, nationality or ethnic or national origins;
- displaying racially offensive material including graffiti;
- racist jokes, banter, insinuations, insults and taunts;
- unfair work allocation; and
- verbal and physical abuse or attacks on individuals because of their race, colour, nationality or ethnic origin.

Any discussion about contentious political issues should be conducted sensitively and with respect for the opinions and beliefs of others.

We all have the right to freedom of expression, but this does not extend to the protection of speech that discriminates against, harasses or incites violence or hatred against others.

Workplace harassment and bullying can occur in a number of ways. Some are obvious and easy to identify. Others are subtle and more difficult to recognise. The key is that the person being bullied or harassed sees the comments or actions or behaviour as offensive, demeaning, disrespectful or unacceptable.

Work-related harassment can be a problem in any workplace and can affect any worker, regardless of the organisation's size or activity. It can happen anywhere in the workplace such as the canteen, toilets, staff room, or in the office.

Harassment may be persistent or an isolated incident and can also be unintentional. The conduct need not be repeated. A serious one-off incident could still be regarded as harassment. It is important to recognise when harassment takes a discriminatory form, as there are greater legal remedies available to someone subjected to this type of behaviour.

Work-related harassment can also occur away from the workplace for example at a client's home or meeting place, at conferences, seminars, on training courses, staff parties, or away from work but resulting from work such as a threatening telephone call to your home from a client.

A harasser can be anyone an employee has contact with because of their work.

That person might be a:

- Colleague/supervisor/manager/board member or trustee;
- Client/customer/service user;
- Patient; and/or
- A contractor or someone making deliveries.

### **What to do if you witness or experience racism in the workplace**

Numerous surveys and research have shown that racial harassment and discrimination continues to exist throughout many workplaces.

1. It is important that victims take immediate steps. UNISON recognises that many people find it difficult to make complaints. Members may also be unwilling to confront the alleged harasser.
2. UNISON encourages all members to contact their UNISON representative if they suspect, witness or experience racism or victimisation in the workplace.
3. Members experiencing harassment are encouraged to keep records of incidents, ie what happened and when; identify any possible witnesses.
4. Keep a diary of all incidents – records of dates, times, witnesses, their own feelings, etc. Keep copies of any relevant documents such as letters, memos, e-mails, etc.
5. Keep records of any medical help sought.
6. The member and union representative should discuss what next steps should be taken.

Finally, if you have been told by your employer that you no longer have the right to live and work in the UK, or you have been dismissed or your contract terminated as a result of the referendum result, this could amount to discrimination and you may be allowed to lodge a claim for unlawful dismissal. You should contact your UNISON representative for advice and assistance. Additionally, the UNISON website offers helpful material on where you can source extra guidance, or if you would like to know more about racial harassment.